

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**FEB 3 1998**

**PATRICK FISHER**  
Clerk

KENNETH B. JOHNSON,

Plaintiff-Appellant,

v.

JUDY UPHOFF, individually, and in her official capacity as Wyoming Department of Corrections Director; JAMES FERGUSON, individually, and in his official capacity as Wyoming Department of Corrections State Penitentiary Warden; WILLIAM HETTGAR, individually, and in his official capacity as Wyoming Department of Corrections State Penitentiary Assistant Warden; BILLY KLINE, individually, and in his official capacity as Wyoming Department of Corrections State Penitentiary Security Manager; JERRY STEELE, individually, and in his official capacity as Wyoming Department of Corrections State Penitentiary Medium Security Unit Manager; RONALD G. RUETTIGERS, individually, and in his official capacity as Wyoming Department of Corrections State Penitentiary Compliance/Audit Officer; DAVID EBELL, individually, and in his official capacity as Corrections Officer, Wyoming Department of

No. 97-8007  
(D.C. No. 96-CV-164)  
(D. Wyo.)

Corrections State Penitentiary; MIKE  
PACHECO, individually, and in his  
official capacity as Corrections  
Officer, Wyoming Department of  
Corrections State Penitentiary;  
JANELL THAYER, individually, and  
in her official capacity as Wyoming  
Department of Corrections State  
Penitentiary Counselor,

Defendants-Appellees.

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**ORDER AND JUDGMENT\***

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Before **PORFILIO, KELLY**, and **HENRY**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff appeals the district court's dismissal of his civil rights complaint, filed pursuant to 42 U.S.C. § 1983. The district court dismissed the complaint

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

as frivolous and for failure to state a claim upon which relief can be granted.

We review the dismissal for an abuse of discretion, see McWilliams v. Colorado, 121 F.3d 573, 574-75 (10th Cir. 1997), and we affirm.

Plaintiff was charged with introduction of contraband in a prison disciplinary proceeding. The disciplinary committee held a hearing and found plaintiff guilty of the offense. Plaintiff appealed, and the Warden upheld the committee's decision. Plaintiff then filed this § 1983 action, arguing that his due process rights were violated in the disciplinary proceeding in several regards. The district court thoroughly analyzed plaintiff's claims and dismissed them as frivolous and for failing to state a claim.

We have reviewed the record, and we AFFIRM the district court's Order Dismissing Civil Rights Complaint for substantially the same reasons set forth therein. This appeal is frivolous and counts as a "prior occasion" for purposes of 28 U.S.C. § 1915(g). The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge